

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

WILLIAM D. LONON,

Petitioner,

v.

**CIVIL ACTION NO. 3:07-CV-21
(BAILEY)**

**WARDEN, NORTHERN REGIONAL
JAIL AND CORRECTIONAL
FACILITY, PRISON SIDE,**

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION
THAT CASE BE DISMISSED WITHOUT PREJUDICE**

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Standing Order entered on March 24, 2000, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on May 8, 2007 [Doc. 6]. In that filing, the magistrate judge recommended that this Court dismiss without prejudice the petitioner's application under 28 U.S.C. § 2254 [Doc. 1].

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo*

review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were due May 22, 2007 [Doc. 6], pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). Neither party filed objections to the R & R. Accordingly, this Court will review the report and recommendation for clear error.

As the magistrate judge stated more fully in his R & R, by Nunc Pro Tunc Order dated February 7, 2007, the Clerk was directed to file the papers styled "Petition under W.Va. Code § 53-4A-1 for Writ of Habeas Corpus" as a petition under 28 U.S.C. § 2254 as of January 8, 2007, the date the initial papers were received by this Court. As well, the Clerk was directed to mail the appropriate forms for filing a habeas petition under 28 U.S.C. § 2254 to the petitioner. Finally, the Order directed the petitioner to complete the appropriate forms necessary to initiate a 28 U.S.C. § 2254 civil action and return them to the Clerk within twenty days from the date of entry of the Order.

A review of the file shows that as of the date of this Opinion, the petitioner has not submitted the required forms. Moreover, the Order that was mailed to the petitioner to the prison side of the Northern Regional Jail and Correctional Facility was returned as undeliverable. Inasmuch as this Court has no way of communicating with the petitioner further, the instant case is **DISMISSED without prejudice** for the failure to prosecute.

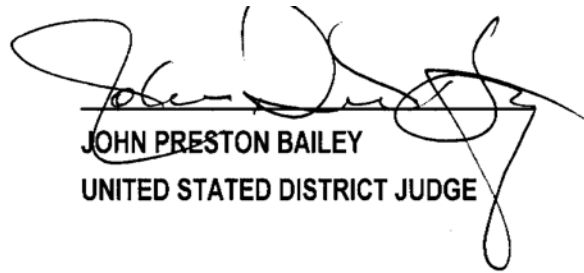
Accordingly, upon careful review of the report and recommendation [Doc. 6], it is the opinion of this Court that the **Magistrate Judge's Report and Recommendation** [Doc. 6] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the Court hereby **DENIES** the petitioner's

application under 28 U.S.C. § 2254 [Doc. 1], and **DISMISSES it without prejudice.**

It is so **ORDERED.**

The Clerk is directed to mail true copies of this Order to all counsel of record and the *pro se* petitioner.

DATED: September 25, 2007.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE